



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 469-99

22 June 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: FORMER [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that her naval record be corrected to show that she was permanently retired vice discharged by reason of physical disability with entitlement to disability severance pay.
2. The Board, consisting of , reviewed Petitioner's allegations of error and injustice on 25 May 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:
 - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
 - b. Enclosure (1) was filed in a timely manner.
 - c. Petitioner was evaluated by a medical board on 23 December 1996, and given diagnoses of status post (S/P) bunionectomy, and S/P Elmslie Trillat procedure for realignment of the right knee. On 3 March 1997, the Physical Evaluation Board (PEB) made preliminary findings that she was unfit for duty because of the condition of her right knee, which it rated at 20%. Petitioner accepted the findings of the PEB on 12 March 1997. In a letter dated 1 April 1997, the President, PEB, advised the Chief of Naval Personnel of the PEB findings, and requested that Petitioner's discharge with entitlement to severance pay be effected, unless she were eligible for and requested retirement under the Temporary Early Retirement Authority (TERA). Petitioner was discharged with entitlement to disability

severance pay on 15 March 1997. She completed 15 years and 8 days of active service. On 12 January 1998, the Department of Veterans Affairs (VA) assigned Petitioner the following disability ratings: 10%, right knee; 10% left knee; 10%, left fourth toe hallux varus; and 10%, lower back pain.

d. Petitioner contends, in effect, that based on the ratings assigned by the VA, she should have received a disability rating from the Navy of more than 30%, which would have qualified her for retirement.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board was unable to conclude that Petitioner was entitled to a disability rating in excess of the 20% rating she received in 1996. In this regard, it concluded that the conditions which were rated by the VA, but not the Navy, did not render her unfit for duty. As such, they were not ratable by the Navy, which rates only those conditions which render a service member unfit for duty. The VA, which is not subject to that constraint, must rate any condition it classifies as "service connected", which it did in this case.

The Board concluded that as Petitioner had completed more than fifteen years of active service at the time of her discharge, which is the minimum period required under the TERA, it would be in the interest of justice to correct her record to show that she was transferred to the Fleet Reserve in accordance with that authority.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

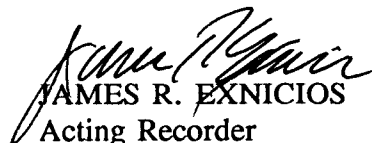
RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that she was not discharged by reason of physical disability on 15 April 1997, and that her record be further corrected to show that she was transferred to the Fleet Reserve on 1 May 1997 under the provisions of the Temporary Early Retirement Authority.

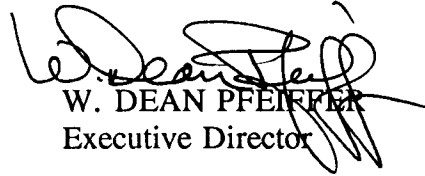
b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JAMES R. EXNICIOS
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director